



**STATEMENT OF THE RELEVANT FACTS**

A response to the Final Office Action was filed June 21, 2004 with a Conditional Notice of Appeal, a petition for a two month extension of time with the requisite fee and a return postcard. The postcard was stamped as received by the U.S. Patent Office of Initial Patent Examination (OPIE) on June 21, 2004 and returned to Applicant. A copy of the stamped postcard is attached herewith as Exhibit B as *prima facie* evidence that the response was timely filed. A copy of the June 21, 2004 filing is enclosed as Exhibit C.

Additionally, Applicant has filed herewith a second Conditional Notice of Appeal to be entered if the Examiner deems that the response does not place the application in condition for allowance. The Director is authorized to charge any fees due in connection with this Notice of Appeal to Deposit Account No. 04-0100.

**CONCLUSION**

Applicant respectfully submits that the Response to the Final Office Action was complete and was timely filed on June 21, 2004. The USPTO acknowledged receipt of the Response within the statutory time period for response, including the extension of time and the stamped postcard is submitted as proof herewith. Applicant submits that the Response was misplaced or mishandled by the USPTO and respectfully submits that no petition fee is due and request that the holding of abandonment be withdrawn.

Dated: January 21, 2005

Respectfully submitted,

By 

Louis J. DelJudice

Registration No.: 47,522

DARBY & DARBY P.C.

P.O. Box 5257


New York, New York 10150-5257

(212) 527-7700

(212) 527-7701 (Fax)

Agent For Applicant

JAN 27 2005



Attorney Docket No.: 00998/100H043-US1



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,291	03/14/2001	Krikor Kouyoumdjian	0998/1H043US1	4267

7590 10/26/2004

DARBY & DARBY P.C.  
805 Third Avenue  
New York, NY 10022

EXAMINER

HARMON, CHRISTOPHER R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/26/2004

TO: LJD  
ATTY REVIEWED LJD  
DATE: 11/4/04

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

JAN 27 2005

OFFICE OF PETITIONS

**Notice of Abandonment**

Application No.

09/808,291

Examiner

Christopher R Harmon

Applicant(s)

KOUYOUMDJIAN, KRIKOR


Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 21 January 2004.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

  
**EUGENE KIM**  
**PRIMARY EXAMINER**

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Atty Docket No.: 00998/100H043-US1

Inventor: Krikor Kouyoumdjian

Appln: 09/808,291

Filed: Mar. 14, 2001

Title: CONTAINER HAVING A CLOSURE FLAP THAT  
INCLUDES AN ARCuate FREE END

Documents:

Notice of Appeal (1 page)

Request for Petition for Two-Month Extension of Time  
(1 page)

Amendment in Response to Final Office Action (4 pages)

Amendment Transmittal Sheet (1 page)

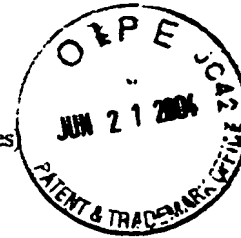
Conditional Notice of Allowance (1 page)

Fee Transmittal (1 page)

Certificate of Express Mailing (1 page)

Check in the amount of \$ 210.00 # 5347

Return Postcard



RECEIVED  
JAN 27 2005  
OFFICE OF PETITIONS

Via: Express Mail: Airbill No.

Sender Initials: LJD/rek/ Date: June 21, 2004

EV996118405 W

## Certificate of Express Mailing Under 37 CFR 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Airbill No. EV 996118405W in an envelope addressed to:

MS AF Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

on June 21, 2004  
Date

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Typed or printed name of person signing Certificate

RECEIVED  
JAN 27 2005  
OFFICE OF PETITIONS

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Request for Petition for Two-Month Extension of Time (1 page);  
Fee Transmittal Sheet (1 page)  
Amendment in Response to Final Office Action (4pages);  
Amendment Transmittal (1 page);  
Conditional Notice of Appeal (1 page)  
Certificate of Express Mailing (1 page); and  
Return Postcard.  
check in the amount of \$210.00



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)</b>		Docket Number (Optional) 00998/100H043-US1	
		In re Application of <b>Krikor Kouyoumdjian</b>	
Application Number <b>09/808,291</b>		Filed <b>March 14, 2001</b>	
For <b>CONTAINER HAVING A CLOSURE FLAP THAT INCLUDES AN ARCuate FREE END</b>			
Art Unit <b>3721</b>		Examiner <b>C. R. Harmon</b>	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ _____
<input checked="" type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ <u>420.00</u>
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ _____

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 210.00

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 04-0100

I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor.

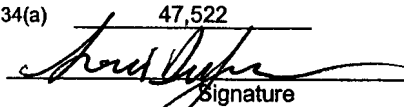
☐ assignee of record of the entire interest. See 37 CFR 3.71.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☐ attorney or agent of record. Registration Number \_\_\_\_\_

☒ attorney or agent under 37 CFR 1.34(a).  
Registration number if acting under 37 CFR 1.34(a) 47,522

June 21, 2004  
Date

(212) 527-7791  
Telephone Number

  
 \_\_\_\_\_  
 Signature  
Louis J. DeJuidice  
 Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below

☐ Total of 1 forms are submitted.

Express Mail Label No. \_\_\_\_\_ Dated: \_\_\_\_\_

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

CONDITIONAL NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket Number (Optional) 00998/100H043-US1	
		In re Application of Krikor Kouyoumdjian	
		Application Number 09/808,291	Filed March 14, 2001
		For CONTAINER HAVING A CLOSURE FLAP THAT INCLUDES AN ARCuate FREE END	
		Art Unit 3721	Examiner C. R. Harmon

**Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.**

**The fee for this Notice of Appeal is (37 CFR 1.17(b))**

**\$ 330.00**

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

**\$ 165.00**

☐ A check in the amount of the fee is enclosed.☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.  
I have enclosed a duplicate copy of this sheet.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 04-0100 . I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

I am the

☐ applicant /inventor.


☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)  
is enclosed. (Form PTO/SB/96)

☐ attorney or agent of record.

Registration number

☒ attorney or agent acting under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a). **47,522**

  
Signature

Louis J. DeJuidice  
Typed or printed name

**(212) 527-7791**

Telephone number

**June 21, 2004**

Date \_\_\_\_\_

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of 1 forms are submitted.

Express Mail Label No. \_\_\_\_\_ Dated: \_\_\_\_\_

# FEE TRANSMITTAL

## for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision

☒ Applicant claims small entity status. See 37 CFR 1.27

<b>TOTAL AMOUNT OF PAYMENT</b>	<b>(\$)</b>	<b>210.00</b>
--------------------------------	-------------	---------------

**Complete if Known**

Application Number	09/808,291
Filing Date	March 14, 2001
First Named Inventor	Krikor Kouyoumdjian
Examiner Name	C. R. Harmon
Art Unit	3721
Attorney Docket No.	00998/100H043-US1

**METHOD OF PAYMENT** (check all that apply)

<input checked="" type="checkbox"/>	Check	<input type="checkbox"/>	Credit Card	<input type="checkbox"/>	Money Order	<input type="checkbox"/>	Other	<input type="checkbox"/>	None
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☐ Deposit Account:

Deposit  
Account  
Number

04-0100

**Deposit  
Account  
Name**

**Darby & Darby P.C.**

**The Director is authorized to: (check all that apply)**

<input type="checkbox"/>	Charge fee(s) indicated below	<input checked="" type="checkbox"/>	Credit any overpayments
--------------------------	-------------------------------	-------------------------------------	-------------------------

☐ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

### **FEE CALCULATION**

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

<b>SUBTOTAL (1)</b>	<b>(\$)</b>	<b>0.00</b>
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## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims		X	
Independent Claims		X	
Multiple Dependent			

Large Entity		Small Entity		<u>Fee Description</u>
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 over original patent

<b>SUBTOTAL (2)</b>	<b>(\$)</b>	<b>0.00</b>
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**\*\*or number previously paid, if greater; For Reissues, see above**

**FEE CALCULATION (continued)**

### 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge – late filing fee or oath	
1052	50	2052	25	Surcharge – late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	210.00
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to Institute a public use proceeding	
1452	110	2452	55	Petition to revive – unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid	<b>SUBTOTAL (3)</b>	(\$)	210.00
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SUBMITTED BY

Name (Print/Type)	Louis J. DeJuidice
-------------------	--------------------

Registration No. (Attorney/Agent)	47,522
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(Complete (if applicable))


Telephone	(212) 527-7791
-----------	----------------

Signature \_\_\_\_\_

Date June 21, 2004

Express Mail Label No.

**Dated:** \_\_\_\_\_

<b>AMENDMENT TRANSMITTAL LETTER</b>			Docket No. 00998/100H043-US1		
Application No. 09/808,291	Filing Date March 14, 2001	Examiner C. R. Harmon	Art Unit 3721		
Applicant(s): Krikor Kouyoumdjian					
Invention: CONTAINER HAVING A CLOSURE FLAP THAT INCLUDES AN ARCUATE FREE END					
<b>TO THE COMMISSIONER FOR PATENTS</b> Transmitted herewith is an amendment in the above-identified application. The fee has been calculated and is transmitted as shown below.					
<b>CLAIMS AS AMENDED</b>					
	Claims Remaining After Amendment	Highest Number Previously Paid	Number Extra Claims Present	Rate	
<b>Total Claims</b>	8	- 20 =		x	0.00
<b>Independent Claims</b>	2	- 3 =		x	0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					
Other fee (please specify):					
<b>TOTAL ADDITIONAL FEE FOR THIS AMENDMENT:</b>					0.00
<input type="checkbox"/> Large Entity <span style="float: right;"><input checked="" type="checkbox"/> Small Entity</span>					
<input checked="" type="checkbox"/> No additional fee is required for this amendment.					
<input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of \$ _____. A duplicate copy of this sheet is enclosed.					
<input type="checkbox"/> A check in the amount of \$ _____ to cover the filing fee is enclosed.					
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.					
<input checked="" type="checkbox"/> The Director is hereby authorized to charge and credit Deposit Account No. <u>04-0100</u> as described below. A duplicate copy of this sheet is enclosed.					
<input checked="" type="checkbox"/> Credit any overpayment.					
<input checked="" type="checkbox"/> Charge any additional filing or application processing fees required under 37 CFR 1.16 and 1.17.					
 Louis J. DeJuidice Attorney Reg. No.: 47,522  DARBY & DARBY P.C. P.O. Box 5257 New York, New York 10150-5257 (212) 527-7769			Dated: <u>June 21, 2004</u>		
Express Mail Label No. _____ Dated: _____					

Express Mail Label No.

Dated: \_\_\_\_\_

Docket No.: 00998/100H043-US1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Krikor Kouyoumdjian

Customer No.: 07278

Application No.: 09/808,291

Art Unit: 3721

Filed: March 14, 2001

Examiner: C. R. Harmon

For: CONTAINER HAVING A CLOSURE FLAP  
THAT INCLUDES AN ARCUATE FREE END

**AMENDMENT IN RESPONSE TO FINAL OFFICE ACTION**

MS AF Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

In response to the Office Action dated April 21, 2004 (Paper No. 15), please amend the above-identified U.S. patent application as follows:

**Remarks/Arguments** begin on page 2 of this paper.

**REMARKS****I. Status of the Claims**

Claims 1-8 are pending.

**II. Telephone Conference**

Applicant thanks the Examiner for all the courtesies extended to Applicant's representative, Louis DeJuidice, on June 16, 2004. Meyers and the claims were discussed and the Examiner suggested that claims are distinguishable over Meyers.

**II. Rejections under 35 U.S.C. § 102**

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,487,704 to Meyers et al. (hereinafter "Meyers"). The Examiner states that Meyers discloses every element of the claims.

Applicant respectfully traverses the rejection and requests that the Examiner reconsider the disclosure and applicability of Meyers in relation to the present invention. Independent claims 1 and 6 recite the steps of:

applying adhesive ...; placing the plurality of folded, flat, unitary blanks ... in at least one stack after the step of applying the adhesive; ... removing one of the folded, flat, unitary blanks from the at least one stack; and moving the removed ... blank from the folded, flat position to an assembled ... position (emphasis added).

Thus, the blanks are glued and folded before they are stacked. The blanks are stacked, folded and moved into the assembled position only after the blanks are removed from the stack.

Meyers does not disclose the order of the steps of the claimed invention. Meyers folds, glues and erects his cartons before he places them in a stack. For example, Meyers states:

After the flat, glued shell has been turned, the clamp is opened to release the shell and deposit it in an unloading or pre-breaker station, FIGS. 17 and 18, where a pre-breaker cradle 36 ... [is] effective to squeeze the shell to erect it and then deliver the shell to the receiving or supply magazine 41 of the cartoner ...

Meyers, column 3, lines 48-54. Further,

adjustments ... are made to assure that ... the carton has indeed been erected to a square position and ... deliver the broken shell to the supply magazine of the cartoner ... [the] carton erected by the pre-breaker is shown in dashed line at EC, FIG. 21, and a broken carton beneath is shown being pushed into the cartoner magazine.

Meyers, column 12, lines 36-42 and 59-61. Furthermore, in Meyer's summary he states that his machine "forms the carton from a flat blank into a side seam glued shell and loads the shell into the magazine of a standard cartoning machine ..." Meyers, column 13, lines 18-20. Thus, Meyers is contrary to the steps as claimed in claims 1 and 6 because both claims recite that the blanks are glued, folded flat and stacked. The glued, flat blanks are not assembled to the upright position until after they are removed from the stack.

Applicant summarizes Meyers' process as follows. First, the blank is removed from a stack, folded and glued by the processed illustrated in Figure 10. Next, the flat glued shell is turned and deposited at the pre-breaker station as illustrated in Figures 17, 18, and 21. At the pre-breaker station the shell is squeezed until it is erected. Only after it is erected is the shell stacked in the supply magazine to be supplied to the cartoner machine. *See*, Meyers, column 3, lines 36-55. Further, arms 254 and 256 in Figures 18 and 21 are referred to as the "erecting cradle". *See*, Meyers, column 11, lines 65-66.

Applicant requests reconsideration by the Examiner in that Meyers does not anticipate the invention of claims 1 and 6. Claims 2-5 and 7 depend from claim 1 and 8 depends from claim 6 and

therefore distinguish over the prior art for at least the same reasons discussed with respect to claims 1 and 6. Applicant respectfully requests that the above rejection be withdrawn.

## CONCLUSION

In view of the above remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved by either a Supplemental Response or a Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: June 21, 2004

Respectfully submitted,

By Paula L. L. L.

Louis J. DelJuidice

Registration No.: 47,522

DARBY & DARBY P.C.

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New York, New York 10150-5257

(212) 527-7700

(212) 753-6237 (Fax)

Agent For Applicant